UNIVERSITY EXAMINATIONS

UNISA university of south africa

June/July 2021

CIV3701

Civil Procedure

100 Marks
Duration 4 Hours

Examiners:
First: **Adv MB Ndlazi**
Second: **MS MP Mothapo**

This paper consists of 6 pages.

CONFIDENTIAL

INSTRUCTIONS FOR A PORTFOLIO OR TAKE-HOME EXAM ON MYEXAMS

PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY BEFORE ANSWERING THE EXAMINATION QUESTIONS.

1 The examination question paper counts **100 marks.**

2 It consists of number of questions. Answer **ALL** of the questions.

3 The duration of the examination is **4 hours**. Your answers must be submitted via myExams platform on **05 July 2021** on or before **17:45** (South African Standard Time).

4 This a **closed-book examination**. While the examination is in progress, you are not allowed to consult another person or any source in order to assist you to answer any of the questions contained in this question paper. While the examination is in progress, you may not assist another student in answering any of the questions contained in this question paper.

5 Your answers to this take-home examination must be submitted online on the myExams platform.

5.1 Access myExams at https://myexams.ac.za/portal and login using your student number and myUnisa password.

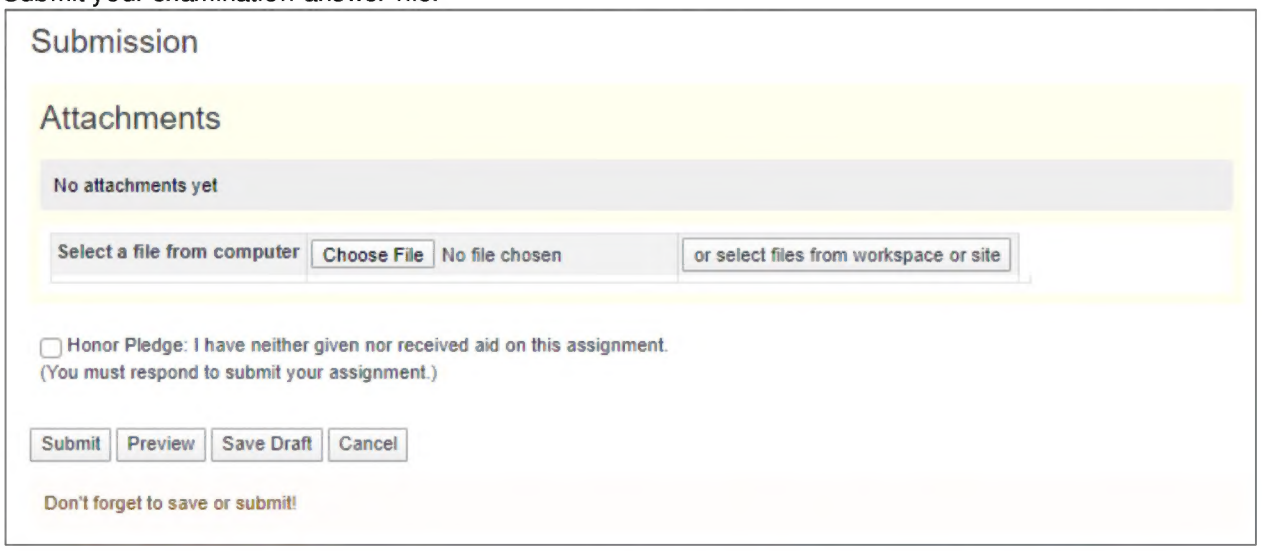
5.2 Go to your specific examination site through the site tabs on the horizontal navigation bar. Also check your **Sites** link in the top right-hand corner if you do not find the site on the horizontal navigation bar.

5.3 Once the site has loaded, select the **eAssessment** tool from the left-navigation menu.

5.4 The list of all available assessments in the site will be displayed.

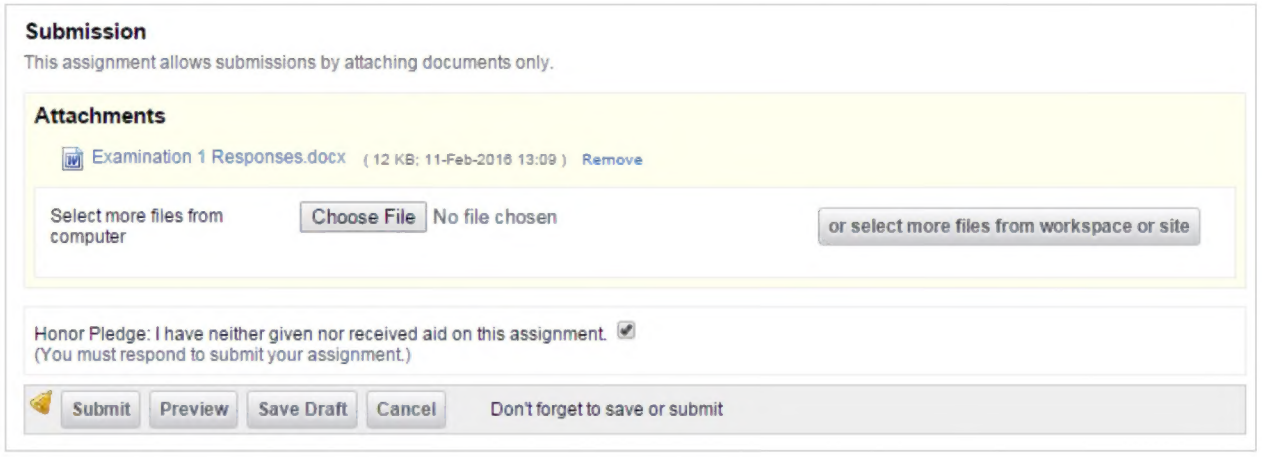
5.5 Select the assessment for which you want to upload the examination answer file by **clicking on the title of the assessment** in the list. A new page will open.

5.6 Submit your examination answer file.



Depending on the assessment criteria, you may be allowed to attach a file or perhaps multiple files.

Under **Attachments**, click the **Choose File** button to browse for a file on your device.


Submission
This assignment allows submissions by attaching documents only.
Attachments
Examination 1 Responses.docx
(12 KB; 11-Feb-2016 13:09)
Remove
Select more files from computer
Choose File
No file chosen
or select more files from workspace or site
Honor Pledge: I have neither given nor received aid on this assignment.
(You must respond to submit your assignment.)
Submit
Preview
Save Draft
Cancel
Don't forget to save or submit

Once you have attached your answer file, the name of the file, as well as the file size and upload time stamp will be displayed under **Attachments**.

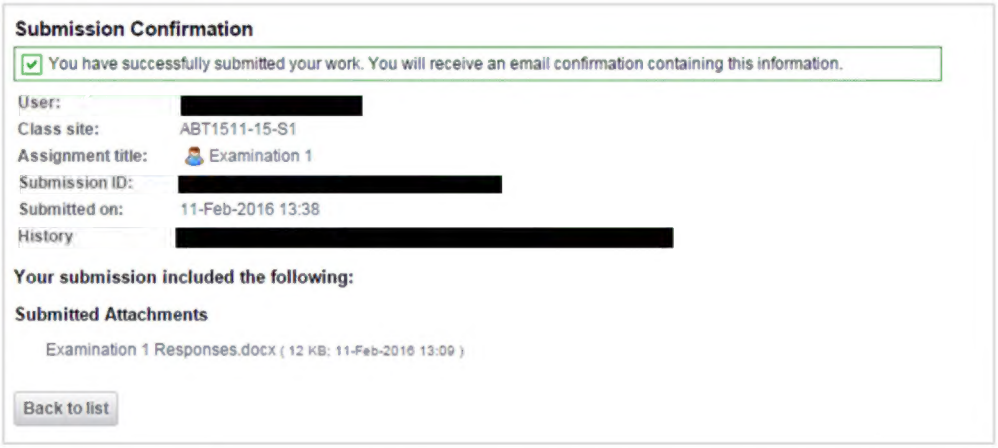
Tip: You may click **Remove** to remove the attachment if you selected the wrong file.

Tip: Select the **honour pledge**. Students MUST check the honour pledge before submission if it appears on the screen. A student will not be able to submit the assessment if he/she did not check the honour pledge.

When you are ready and satisfied that you have selected the correct answer file, click the **Submit** button to complete your assessment submission.

Tip: If you are not yet ready to submit, you may click **Preview** to preview the submission, or **Save Draft** to save your submission and submit it later. Click **Cancel** to exit the assessment without saving or submitting.

5.7 Submission confirmation


Submission Confirmation
You have successfully submitted your work. You will receive an email confirmation containing this information.
User:
Class site: ABT1511-15-S1
Assignment title: Examination 1
Submission ID:
Submitted on: 11-Feb-2016 13:38
History
Your submission included the following:
Submitted Attachments
Examination 1 Responses.docx (12 KB: 11-Feb-2016 13:09)
Back to list

Once you have submitted your assessment, you will receive a confirmation message on the screen. **Make a screen copy for your records**. In addition, if you have opted to receive email notifications, you will also receive an email confirmation of your submission.

6 The cover page to your take-home exam must include your name, student number and the module code.

7 Whether your answers are typed or handwritten, your submission on the myExams platform must be made in the form of **one PDF** document.

8 If your answers are typed, ensure that the following requirements are adhered to. Items 9.3–9.6 apply to written assignments as well.

8.1 The text must be typed in Arial font, size 12 with single line spacing within the paragraph, and double line spacing after the paragraph.

8.2 The text must be justified.

8.3 All of the pages must be numbered in the bottom right hand corner of the page.

8.4 All margins must be 2.5cm, but the left margin must be 3cm.

8.5 South African English and not American English should be used. For example, the correct spelling is "Labour" and not "Labor".

8.6 Do not use abbreviations or SMS language.

8.7 All quotes that are two lines long (or less), must form part of the main text, be written in italics, and be bracketed by quotation marks. Where a quotation is longer than two lines, it must be typed in a separate paragraph in italics in size 11 font and must be indented by 1 cm. No quotation marks are required when the quotations stand alone. Use quotations very sparingly. In this take-home exam, a maximum of 5% of the text may be quoted.

9 When answering the take-home exam questions, remember that an open-book exam is a test at a higher level than the usual type of exam, where memory is tested as much as insight. In an open-book exam, you need not memorise any information. You are expected to prove that you can use information, rather than merely repeat it. In brief, what is being tested is factual knowledge, understanding and the correct application thereof, not memory skills. For this reason, you do not earn marks by merely detailing a list of all the information that you think might be relevant to a particular question. This gives no indication that you know what statutory or other provisions are applicable in a specific context. You are expected to identify precisely what information applies, and then explain why you think so. Also, because yo u have the guide available when answering questions, we do not give marks for direct quotations from the guide. You are therefore assessed on your level of understanding of the legal principles by looking at how well you applied the principles to the questions. **PLEASE DO NOT CUT AND PASTE ANSWERS FROM THE STUDY GUIDE (OR ANY OTHER SOURCE).**

10 The arguments that you make must be logical, well-structured and substantiated by all of the relevant legal principles. You are given 4 hours to complete the take-home exam. Use the time given wisely.

10.1 Ensure that you give reasons for each answer. Substantiate your answers by referring to ALL of the relevant authorities, e.g. sections from relevant legislation and/or court cases in the text or in your footnotes.

10.2 You are required to have read and summarised the prescribed cases yourself. The summaries in the Study Guide are not sufficient for this exam. When using case law to support your answer, please include complete references to the relevant cases in your footnotes. This means that you must not only include the name of the case but also the exact page and section and/or paragraph where the information can be found. The same applies to articles and books used.

10.3 A number of students lose marks because they do not approach problem-type questions correctly. When answering such questions, it is important to first clarify for yourself the area of work where the answer must be sought. Once you have done this, set out the relevant legal principles. Deal only with those principles that relate to the given facts. Next, apply these principles to the facts. This is where most of the students lose marks – they set out the law in some detail, but then do not illustrate how it applies to the factual situation they have been asked to solve. Finally, state your conclusion.

11 By ticking the Honour Pledge, you confirm that you have read (i) the University's Policy on Copyright Infringement and Plagiarism and the Student Disciplinary Code, which are both available on myUnisa: www.unisa.ac.za/unisarules, and (ii) the information relating to student values and plagiarism that is found at https://www.unisa.ac.za/sites/myunisa/default/Study-@-Unisa/Student-values-and-rules.

PLEASE NOTE:

If you experience technical problems of any kind on the day of the examination and your examination answers are not submitted by the cut-off time, if you are an–

(i) Early Completion Student (ECP) student, you will automatically be transferred to the September-November examination period; or

(ii) aegrotat or supplementary student, you will be marked as absent.

INTRODUCTORY STUDIES

QUESTION 1

(a) Briefly **explain** the concepts of domicile and residence in the context of jurisdiction. (4)

(b) Critically compare the role of a commissioner in the Small Claims Court to that of a judicial officer in the Anglo-American systems procedure, in respect of the conduct of trial proceedings. (6)

(c) Briefly discuss court-annexed mediation in civil court as a tool to increase access to court and user-friendly to litigants. (5)

(d) Briefly discuss the difference between process and pleadings. (5)

[20]

HIGH COURT JURISDICTION AND PROCEDURE

QUESTION 2

A issues summons against B for payment of an amount of money lent and advanced in terms of a property executed and signed acknowledgement of debt. The total amount due in terms of this acknowledgement of debt is R500 000.

(a) Explain which summons/es may be used to institute an action in these circumstances. (4)

(b) Suppose that the document on which A relies for his action states that B is liable for payment of the amount of R500 000 if one Z should fail to make such payment. Would this fact influence your answer in (a) above? (4)

(c) Suppose the matter reaches the stage where pleadings are exchanged irrespective of your answer in (a) above. Answer the following questions.

(i) A, is of the opinion that it is necessary to include a further or alternative cause of action in his documents. Name the procedure that A may use to accomplish this step. (2)

(ii) Name the pleadings that can be exchanged between the parties before the close of pleadings. (3)

(iii) Name the three (3) factors that the court will take into account in deciding whether or not the procedure referred to in (c)(i) above should be allowed. (3)

(d) B, decides to try and settle the action. Name the four (4) requirements that an offer to settle has to meet in terms of Rule 34 of the Uniform Rules of Court. (4)

[20]

QUESTION 3

(a) Q, is a citizen of Namibia residing in Namibia. Q is invited to a business conference in Durban. Q owns a house in Cape Town. Whilst in Durban on his way to the conference, Q collides with another car driven by Y. Y resides in Pretoria and was also attending the conference. Y alleges that the collision was solely caused by Q. Y suffers damages in the amount of R500 000. Y wants to sue Q for damages suffered.

(i) Advise Y whether the KwaZulu-Natal Local Division, Durban and the Western Cape Division, Cape Town will have jurisdiction to hear the matter. (6)

(ii) Discuss the relevance of section 42(2) of the Superior Courts Act, 2013 to the facts. (4)

(iii) Will your answer to (i) above change if Q consent to the Kwazulu-Natal local Division, Durban? Your answer should make reference to applicable case law. (5)

(b) X and Y have been married to each other for 2 Years. They both reside in Botswana. Y is sent to Durban for employment. Whilst in Durban for 8 months, Y decides to divorce X. With these facts in mind answer the following questions:

(i) Will the KwaZulu-Natal local Division, Durban have jurisdiction on the matter? (3)

(ii) Does Y have a choice to institutes the proceeding in a regional or district magistrates' Court? (2)

[20]

MAGISTRATES' COURTS JURISDICTION AND PROCEDURE

QUESTION 4

Q is a landlord, and Z is his tenant. Z is in arrears with his rent. Q issues summons against Z for the arrear rent. With regards to these facts, determine, giving full reasons for each answer–

(a) what the letter of demand sent to Z by Q would generally seek to achieve. (1)

(b) the form of service of summons if Z vacates the property in the dead of night without leaving a forwarding address, but is believed to be living somewhere in the same province. (2)

(c) the procedure that Q could use if Z fails to respond to the summons within the time stated in the summons. (1)

(d) the procedure that Q may use if Z files a notice of intention to defend within the *dies induciae,* and Q believes that Z has done so for no good reason and is simply playing for time. (2)

(e) whether it is necessary for Q's attorney to file a power of attorney with the court when instituting proceedings on Q's behalf. (2)

(f) whether Z will succeed in requesting the court to award him costs *de bonis* propriis against Q's attorney if Z succeed in successfully defending him against the procedure referred to in (iv) above. (2)

[10]

QUESTION 5

(a) C and D conclude a contract in terms of which D undertakes the development of specialised software to protect the computer systems of C's business against unauthorised access. The contract is concluded in a coffee shop in Durban. C's business is situated in Johannesburg, and D lives in Durban. D fails to install the software at C's business premises. C wants the court to compel D to install the software.

(i) Will any of the mentioned magistrates' districts have jurisdiction in the matter? Refer to relevant case law. (6)

(ii) Will your answer to (i) above change if C sues D for the damages paid to install the software for R400 000? (4)

(b) B owns property in Durban, which she has rented to A. The monthly rent is R30 000. A is four months in arrears, and B suspects that A plans to leave the property to avoid paying the arrear rent in the amount of R120 000. Advise B regarding the steps she may take to recover payment of the arrear rent. (5)

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APPEAL, REVIEW AND VARIATION OF JUDGMENT

QUESTION 6

(a) If X appeals against the judgment of a single judge, may Y, the plaintiff, execute this judgment given in his favour? (4)

(b) Name the procedure that must be followed when variation of judgment is sought in terms of Rule 42 of the Uniform Rules of Court. (1)

(c) Name the four (4) grounds for review contained in section 22 of the Superior Courts Act 10 of 2013. (4)

(d) Briefly explain when a Superior Court will review proceedings of quasi-judicial bodies. (2)

(e) Which essential information must be included in a notice of appeal from a magistrates' court? (2)

(f) Briefly explain when the Constitutional Court may be approached directly on appeal from any other court. (2)

[15]

TOTAL: [100]

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